from cases declaring valid ordinances prohibiting "museums of anatomy," displaying models, pictures and charts of the human body, as the purpose of such ordinances is clearly the protection of the public morals. *Chicago* v. *Shaynin,* 258 Ill. 69, 101 N. E. 224. G. S.

RIGHTS IN PERCOLATING WATERS.—Almost without exception the courts approve of *Acton* v. *Blundell,* 12 M. & W. 324, to the extent of its actual decision,—that where as a result of improvement or enjoyment of one's own land one conducts operations which draw off percolating waters from a neighbor's land, even to the extent of drying up a well or spring, such inconvenience is to be deemed *damnum absque injuria.* The doctrine of the court "that the person who owns the surface may dig therein, and apply all that is there found to his own purposes at his free will and pleasure," if intended to be taken as broadly as stated and not limited to the facts then before the court, has not received such uniform support.

In *Chasemore* v. *Richards,* 7 H. L. Cas. 349, that doctrine was applied to a case where percolating waters were drawn off by powerful pumps, the water being conducted some distance away for use. And in *Mayor* v. *Pickles* [1895], A. C. 587, it was held that even though the abstraction was malicious the result should be the same.

On the other hand in *Meeker* v. *East Orange,* 77 N. J. L. 623, 74 Atl. 379, 25 L. R. A. (N. S.) 465, 134 Am. St. Rep. 798, it was held that the right of an occupant of land as against neighbors to abstract percolating waters was not absolute, but relative, that the doctrine of "reasonable use" applied. About all there is to be said against *Chasemore* v. *Richards* was said by Chancellor Pitney in the New Jersey Case. The opinion contains not only a thorough discussion of the problem on principle but also a review of the decided cases.

In *Schenk* v. *City of Ann Arbor,* 163 N. W. 109 (May 31, 1917), the Michigan court repudiates *Chasemore* v. *Richards,* the court contenting itself with quoting from and following *Meeker* v. *East Orange, supra,* and *Hathorn* v. *Natural Carbonic Gas Co.,* 194 N. Y. 326, 87 N. E. 504, 23 L. R. A. (N. S.) 436, 128 Am. St. Rep. 555. Four justices dissented, but not on the fundamental question.

One feature of *Chasemore* v. *Richards* perhaps has not been sufficiently emphasized. The plaintiff there was the owner and operator of a mill operated by water power, developed by a stream, a part of the supply of which was the percolating water cut off by the defendant. The water abstracted had not reached the stream nor any tributary thereof—it was not stream water any more than rain water wandering over the surface is stream water. The rights of the plaintiff were those of a riparian proprietor to have a reasonable use of the waters of the stream and the defendant no doubt owed him a duty not to make an unreasonable use of the waters of the stream. In truth, however, the defendant had not done anything with the water of the stream, not any more than had the defendant in *Broadbent* v. *Ramsbottom,* 11 Ex. 602.

Percolating water is a gift of nature; like air we know not whence it comes nor whither it goes. If the doctrine of reasonable use is properly applied in the case of air, why should it not be good sense and good law in the case of water? R. W. A.

THE RIGHT OF FISHING.—While the man engaged in fishing is ordinarily more concerned with the supply of fish and their susceptibility than with his right to be doing what he is, not infrequently the latter question is thrust upon his attention. Popular notions on this matter are not to be relied upon. "In country life a multitude of acts are habitually committed that are technically trespasses. Persons walk, catch fish, pick berries, and gather nuts *in alieno solo*, without strict right. Good natured owners tolerate these practices until they become annoying or injurious, and then put a stop to them," ADAMS, J., in *Albright* v. *Cortright*, 64 N. J. L. 330.

It would seem quite clear that a man has no right to fish where he has no right to be. So it is uniformly held that the public have no right to fish in a non-navigable, non-tidal body of water, the beds of such bodies being owned privately. *Albright* v. *Cortright, supra; Baylor* v. *Decker*, 133 Pa. St. 168; *State* v. *Theriault*, 70 Vt. 617, 41 Atl. 1030, 43 L. R. A. 290, 67 Am. St. Rep. 695; *Hargreaves* v. *Diddams*, L. R. 10, Q. B. 582. On the other hand it is equally clear that the public may fish in tidal waters. *Warren* v. *Mathews*, 6 Mod. 73; *Weston* v. *Sampson*, 8 Cush, 347. For this purpose the Great Lakes and the bays and arms thereof are treated as the sea. *Lincoln* v. *Davis*, 53 Mich. 375, 19 N. W. 103, 51 Am. Rep. 116; *Hogg* v. *Beerman*, 41 Oh. St. 81, 52 Am. Rep. 71. The beds of the sea and the Great Lakes, it should be noted, are not privately owned.

Difficulty is encountered when the body of water is non-tidal but navigable in fact. Confusion has been provoked by the use in cases and books of the expressions "navigable water" and "tidal waters" or the "sea" as interchangeable. So when it is said, as in *Warren* v. *Mathews, supra*, that "every subject of common right may fish with lawful nets, etc., in a *navigable river*, as well as in *the sea*," the extent of the right of the public to fish in a navigable body of water would seem quite clear. It has been held, however, in England, that there is no public right of fishing in water merely because it is capable of being navigated. The right of fishing in such waters is in the proprietor of the bed thereof. *Pearce* v. *Scotcher*, 9 Q. B. D. 162. In *Smith* v. *Andrews* [1891], 2 Ch. 678, where the action was for trespass by fishing in the Thames, the court said (p. 692): "The plaintiff's title having been thus challenged, she has thought it necessary or desirable to prove it from the earliest times. * * * It would certainly have been necessary if that portion of the Thames now in question had been affected by the ebb and flow of the tide, as well as being navigable, for then the bed or soil of the river would have been in the Crown, and the right of fishing in the public, unless the plaintiff could have made out a valid title to the fishery based upon some grant by the Crown antecedent to Magna Charta." Again, on page 695, it was said: "The idea is sometimes entertained that the right to pass along